

HOUSE BILL No. 1069

DIGEST OF INTRODUCED BILL

Citations Affected: IC 34-13-8.

Synopsis: Small business litigation expenses. Requires a state or local governmental entity to pay reasonable litigation expenses to a small business if a court awards the litigation expenses after finding that the governmental entity brought a civil action or administrative action against the small business without substantial justification.

Effective: July 1, 2007.

Koch

January 8, 2007, read first time and referred to Committee on Small Business and Economic Development.

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Introduced

First Regular Session 115th General Assembly (2007)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2006 Regular Session of the General Assembly.

HOUSE BILL No. 1069

A BILL FOR AN ACT to amend the Indiana Code concerning civil procedure.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 34-13-8 IS ADDED TO THE INDIANA CODE AS
2 A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY
3 1, 2007]:
4 **Chapter 8. Payment of Small Business Litigation Expenses by**
5 **Governmental Entities**
6 **Sec. 1. This chapter does not apply to an action brought under**
7 **IC 24-1 concerning restraint of trade.**
8 **Sec. 2. As used in this chapter, "governmental entity" means an**
9 **agency, department, board, institution, hospital, or college or**
10 **university of:**
11 **(1) the state; or**
12 **(2) a political subdivision of the state.**
13 **Sec. 3. (a) As used in this chapter, "prevail" means to obtain a**
14 **favorable final judgment in an action:**
15 **(1) on substantially all counts or charges in the action; and**
16 **(2) with respect to the most significant issue or set of issues**
17 **presented in the action;**



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after the right to all appeals has been exhausted.

(b) The term does not include the settlement of an action, either by stipulation, consent decree, or otherwise, regardless of when the settlement occurs.

Sec. 4. As used in this chapter, "reasonable litigation expenses" means:

- (1) court costs;
- (2) administrative hearing costs;
- (3) attorney's fees; and
- (4) witness fees;

that a court finds were reasonably incurred by a small business in opposing a civil action or administrative action brought against the small business by a governmental entity.

Sec. 5. (a) As used in this chapter, "small business" means a commercial or business entity, including a sole proprietorship, that has not more than two hundred fifty (250) employees.

(b) The term does not include an entity that is a subsidiary or affiliate of another entity that is not a small business.

Sec. 6. If:

- (1) a governmental entity brings a civil action:
 - (A) against a small business; and
 - (B) that involves the business regulatory functions of the governmental entity;
- (2) the small business prevails in the civil action; and
- (3) the court finds that the civil action was brought by the governmental entity without substantial justification;

the court may award reasonable litigation expenses to the small business.

Sec. 7. If:

- (1) a governmental entity makes a final administrative decision concerning a small business that:
 - (A) involves the business regulatory functions of the governmental entity; and
 - (B) that is appealed under IC 4-21.5-5 by the small business;
- (2) the small business prevails in the appeal; and
- (3) a court finds that the administrative action that led to the final administrative decision was undertaken without substantial justification;

the court may award reasonable litigation expenses to the small business.

Sec. 8. A small business must exhaust all administrative

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1 remedies available to the small business before the small business
2 may be awarded reasonable litigation expenses under this chapter.

3 Sec. 9. If a governmental entity is required to pay reasonable
4 litigation expenses under this chapter, the expenses must be paid
5 from money in the regular operating budget of the governmental
6 entity.

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